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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,651	08/07/2006	Georg Geywitz	8369.028.US0000	9253
77407 7590 07/29/2010 Novak Druce & Quigg LLP 300 New Jersey Ave, NW Fifth Floor Washington, DC 20001				
EXAMINER LEWIS, TISHA D				
ART UNIT 3655		PAPER NUMBER		
MAIL DATE 07/29/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,651

Applicant(s)

GEYWITZ ET AL.

Examiner

TISHA D. LEWIS

Art Unit

3655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

In view of the appeal brief filed on 5/6/2010, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Robert A. Siconolfi/

Supervisory Patent Examiner, Art Unit 3657.

Response to Arguments

The following is a response to the request for reconsideration received on March 8, 2010 which has been entered.

Claims 1-14 are pending in the application.

Applicant's arguments filed 3/8/2010 have been fully considered but they are not persuasive. Applicant's arguments pertaining to what the examiner considers approval

criteria in the Hess art as not being the approval criteria as claimed because the operating variables are not compared to approval criteria is acknowledged; however, claim 1 doesn't recite what the "approval criterion" has to be, i.e., start up or initial rolling of vehicle as argued by applicant. The operating variables of Hess in which the examiner considers to correspond to the claimed "approval criterion" have to provide a specific value/measurement in order for the ECU to determine if engine torque control is going to be by the air supply or fuel/ignition angle, therefore since the "approval criterion" limitation is vague as to what the criterion has to be in claim 1 or at least what the criterion has to be compared to as argued, that particular limitation is still met by the Hess art and the entire claim is still rejectable by Tabata in view of Hess as disclosed below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 5 recites the limitation "the engine" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the driving speed" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the engine speed" in 7. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the quotient" in 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the driving speed" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the throttle valve" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the ignition" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the fuel injection" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the engine noise" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the clutch" in line 3. There is insufficient antecedent basis for this limitation in the claim.

As to claim 4, "a specific delay time" is introduced in line 2 and " a delay time" is introduced in line 3, are the two delay times the same time and if so this would be a double inclusion of that particular limitation.

As to claim 5, lines 6 and 7 recite "....wherein the default engine torque is determined as a function of at least one engine characteristic" and then recites at least three characteristics used for determining the default torque. It is unclear as to if the

three characteristics are used altogether for the determination or as an alternative of each other and if the altogether applies, then the "at least one engine characteristic" limitation would be invalid.

Claims 1-14 provides for the use of a method for controlling the engine of a motor vehicle, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-14 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2785238 (IDS). FR discloses an engine torque control system wherein when at least one approval criteria (starting off) for an engine torque (2) which is dependent on driving state of the vehicle is met , a default engine torque (4, 6 or 7) which can be reduced

relative to a set point engine torque (2a) required by the position of an accelerator (via 1) of the vehicle is stipulated, and wherein the default torque is determined as a function of at least one engine characteristic (i.e., economic fuel saving mode). As to claim 10, FR discloses the default torque (4, 6 or 7) deviating (Figure 1) from the setpoint torque (2a) on an action of at least one of a throttle valve, the ignition and the fuel injection of the vehicle (well known in art to have engine torque adjusted using one or all of the above).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 8-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata et al 6258008 (IDS reference) in view of Hess. (As to claim 1), Tabata discloses a method of controlling the engine having a manual transmission wherein the engine torque is reduced dependent on operating conditions of the vehicle (discloses that the transmission for engine torque reduction can be manual) to avoid damage to a clutch of the vehicle during restart of the engine (as to claim 14). Tabata doesn't disclose the method for reducing the engine torque as claimed.

Hess et al discloses an engine torque control system wherein when at least one approval criteria for engine torque which is dependent on driving state of the vehicle is met (Miac corresponds to engine torque and operating variables sent to ECU 10

correspond to criteria), a default engine torque (Mi-des-L or Mi-des) is stipulated (from 104), the default torque can be reduced relative to a setpoint torque (Mi-ped) required by the position of an accelerator (beta) of the vehicle (column 3, lines 55-58 suggest that if the driver changes pedal position, then the values assume different values which suggest that the default torques Mi-des can be reduced or increased according to pedal position) and the default torque is determined as a function of at least one engine characteristic (via 32 or 34).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata with the engine torque reduction method in view of Hess to optimize the dynamic of engine torque control during certain operating states of the vehicle (i.e., start phase, acceleration, etc.).

As to claim 5, Tabata in view of Hess discloses the limitations of claim 1 and including wherein at least the engine speed is used as at least one of an engine characteristic for determining the default engine torque (Figure 3 discloses engine speed being used as a characteristic). As to claim 8, Hess discloses the default torque being determined by applying a torque factor (Mi-far) to the setpoint torque (Hess discloses that Mi-ped is interpolated into multiple torques Min, Max to come up with Mi-far). As to claim 9, Hess discloses that the factor is determined from a characteristic map (the block 102 should disclose a table or map for storing the min, max values to come up with the factor. As to claim 10, Hess discloses the default torque deviating from the setpoint torque to initiate a throttle valve (Hess discloses that when the driver changes pedal position, torque values are changed and throttle flap is controlled).

Claims 2, 3, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata in view of Hess as applied to claim 1 above and further in view of Yoshida et al 5078109. Tabata in view of Hess discloses that the approval criteria (operating variables) can have a vehicle variable (column 1, lines 53-55), but doesn't disclose that it is a driving speed.

Yoshida discloses an engine torque control wherein a target engine torque is determined according to a vehicle speed threshold which are the ranges disclosed in Figure 11 from 0 to 80 km/h, encompasses 25 to 40 and 35 km/h.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata in view of Hess with a vehicle speed criteria in view of Yoshida for engine torque control to obtain a desired vehicle speed, acceleration, etc.

As to claim 3, Hess discloses the default torque stipulated after a start up process of the vehicle depending on at least one engine characteristic (claim 3 discloses Mi-des used at operating state which can be a start phase).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tabata in view of Hess as applied to claim 1 above and further in view of Mabuchi et al 6742498. Tabata in view of Hess discloses a default engine torque, but does not disclose it being used for influencing engine noise.

Mabuchi et al discloses control of engine torque by setting a target torque to eliminate engine speed noise during idling.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Tabata in view of Hess with an engine noise control using engine torque control in view of Mabuchi et al to eliminate engine noise during idling.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 9:30AM TO 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tdl

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/TISHA D. LEWIS/

Primary Examiner, Art Unit 3655

July 14, 2010